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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte NICK J. PUDAR*

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Appeal 2008-0410  
Application 09/870,377  
Technology Center 3600

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Decided: April 30, 2008

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*Before:* TERRY J. OWENS, HUBERT C. LORIN and  
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 The Appellant appeals under 35 U.S.C. § 134 (2002) from the final  
3 rejection of claims 1-45. We have jurisdiction under 35 U.S.C. § 6(b)  
4 (2002).

1       The claims on appeal relate to a radio system and method for  
2 delivering advertising content to an occupant of a vehicle such as an  
3 automobile. Independent claim 1 is representative of the Appellant's claims  
4 and reads as follows:

5

6                 1.     A method of delivering advertising  
7                   content to a vehicle occupant using a vehicle radio,  
8                   comprising the steps of:

9                   receiving a radio advertisement;

10                  storing the radio advertisement in memory;

11                  receiving a radio broadcast stream;

12                  monitoring the received radio broadcast

13                  stream for marker data indicative of an advertising  
14                  slot within the radio broadcast stream; and

15                  playing the radio broadcast stream using the  
16                  vehicle radio and, in response to detecting the  
17                  marker data, accessing the radio advertisement  
18                  from memory and playing the radio advertisement  
19                  in the advertising slot using the vehicle radio.

20

21       Claims 1-13, 16-19 and 21-41 stand rejected under 35 U.S.C. § 102(b)  
22 (2002) as being anticipated by Dimitriadis (U.S. Patent 5,664,948). Claims  
23 14, 15, 20 and 42-45 stand rejected under 35 U.S.C. § 103(a) (2002) as being  
24 unpatentable over Dimitriadis in view of Hite (U.S. Patent 5,774,170).

25       We REVERSE the rejection of claims 1-13, 16-19 and 21-41 under  
26 section 102(b) as being anticipated by Dimitriadis. We REVERSE the  
27 rejection of claim 42 under section 103(a) as being unpatentable over  
28 Dimitriadis in view of Hite. We AFFIRM the rejection of claims 14, 15, 20  
29 and 43-45 under section 103(a) and designate the grounds of the affirmance  
30 as new grounds of rejection. We enter NEW GROUNDS OF REJECTION

1 against claims 1-7, 13, 16, 17 and 21-25 under section 103(a) as being  
2 unpatentable over Dimitriadis in view of Hite.

3

4 ISSUES

5 The four primary issues in this appeal are:

6 (1) Whether Dimitriadis discloses, or Dimitriadis and Hite suggest,  
7 using marker data in a radio broadcast stream to identify the location of an  
8 advertising slot (*see* App. Br. 10);

9 (2) Whether Dimitriadis discloses, or Dimitriadis and Hite suggest,  
10 inserting a radio advertisement into an advertising slot so that the  
11 advertisement is included within audio content sent to an input of a vehicle  
12 radio which is coupled to a radio broadcast receiver (*see* Reply Br. 4-5);

13 (3) Whether Dimitriadis and Hite suggest using advertisement data to  
14 determine which received radio advertisements to store in memory (App. Br.  
15 13-14) or, more specifically, whether these references suggest storing  
16 selected advertisements on a recording device based on a comparison of  
17 primary selection data stored in a vehicle radio system with primary  
18 selection data included with the advertisement (App. Br. 19-20); and

19 (4) Whether Dimitriadis and Hite suggest selecting a stored  
20 advertisement based on secondary selection data for playback via the vehicle  
21 radio during an advertising slot (App. Br. 19-20).

22

23 FINDINGS OF FACT

24 The record supports the following findings of fact (“FF”) by a  
25 preponderance of the evidence.

1       1. Dimitriadis discloses a travel information device including a car  
2 radio and a paging device which together collect and store advertising  
3 content for later presentation. (Dimitriadis, col. 2, ll. 64-67). The travel  
4 information device includes an antenna, a data radio receiver for receiving a  
5 voice broadcast and a voice radio receiver for receiving a data broadcast.  
6 The voice radio receiver delivers a voice signal derived from the voice  
7 broadcast to the microprocessor and separately to an amplifier which drives  
8 speakers to play the voice broadcast. (Dimitriadis, col. 4, ll. 1-3, 47-48 and  
9 55-58).

10      2. The travel information device additionally includes a memory  
11 resource for storing indexed advertising content received through the data  
12 broadcast or copied from the voice broadcast. (Dimitriadis, col. 4, ll. 24-26  
13 and col. 5, ll. 1-3). The memory resource stores advertisements in data  
14 structures which include fields for containing condition lists providing sets  
15 of conditions indicating presentation of the associated advertising content.  
16 (Dimitriadis, col. 5, l. 66 – col. 6, l. 1). “Once advertisements from voice  
17 and data broadcast 22 and 26 are stored within device 40, subsequent  
18 conditions or explicit commands trigger presentation thereof to the operator  
19 of vehicle 10 . . . .” (Dimitriadis, col. 4, ll. 26-32).

20      3. The microprocessor detects subsequent conditions which might  
21 trigger presentation of an advertisement by means of a repeating control loop  
22 which, once entered, repeats as a background process monitoring subsequent  
23 conditions and seeking stored advertisements having matching conditions in  
24 their condition lists. (Dimitriadis, col. 8, l. 64 – col. 9, l. 1). “Upon finding  
25 a match between current conditions and members of any condition list 400b,

1 microprocessor 60 queues the associated [stored advertisements] for  
2 presentation . . .” (Dimitriadis, col. 9, ll. 1-5).

3       4. One command which the travel information device might  
4 receive through the data broadcast is a “PRESENT” command. “PRESENT  
5 command 500c and its index parameter cause device 40 to present the  
6 associated advertisement information, i.e., queue for presentation the record  
7 400 bearing the associated index.” (Dimitriadis, col. 6, ll. 54-57 and col. 8,  
8 ll. 20-25).

9       5. Dimitriadis teaches that:

10  
11           An advertisement presentation block 104  
12 receives from microprocessor 60 an index value  
13 and has direct access to the memory resource 90  
14 for presentation of advertisements stored therein.  
15 Thus, microprocessor 60 queues advertisement  
16 presentation by providing a sequence of index  
17 values to the advertisement presentation block 104.  
18 The advertisement presentation block, in turn,  
19 accesses memory resource 90 by reference to a  
20 queued index value and collects the requested  
21 advertisement record 400 for presentation.

22

23 (Dimitriadis, col. 5, ll. 7-15). The Examiner has not identified a disclosure  
24 in the reference sufficient to show that an advertisement is played when  
25 queued.

26       6. When an advertisement is played, the advertising presentation  
27 block delivers stored audio advertising content to the amplifier which drives  
28 the speakers. (Dimitriadis, col. 5, ll. 19-24). The Examiner has not  
29 identified a disclosure in the reference sufficient to show that the advertising

1 presentation block communicates with the amplifier through the input  
2 coupled to the voice radio receiver.

3       7. Dimitriadis teaches that the system which generates the data  
4 broadcast “supports group addressing whereby a single paging data packet  
5 transmission may be addressed to groups of receiving devices. . . . By  
6 loading into receiving devices 40 advertisements tailored to group needs, the  
7 advertiser targets specific audiences with specific advertising messages.”  
8 (Dimitriadis, col. 9, ll. 44-46 and 52-54).

9       8. Hite teaches systems and processes for delivering television and  
10 radio advertising content targeted to individuals’ desires and needs. (Hite,  
11 col. 1, ll. 7-10). One of Hite’s systems includes an individually addressable  
12 digital recording device at the site where the advertising content is to be  
13 delivered. The recording device stores predetermined consumer  
14 identification codes [“CID codes”] chosen for the consumer. (Hite, col. 6, l.  
15 60 – col. 7, l. 3).

16       9. The system receives advertisements with attached CID codes  
17 and codes indicating conditions and rules required to play each  
18 advertisement. These conditions and rules may include a condition or rule  
19 regarding the day-part required to play an advertisement. The system stores  
20 in the recording device advertisements selected by comparing the CID code  
21 attached to each received advertisement with the predetermined CID codes  
22 previously stored in the recording device. (Hite, col. 7, ll. 7-12).

23       10. Suitable reception equipment at the site receives a broadcast  
24 including breaks or slots having unique CID codes and plays the broadcast  
25 content. (Hite, col. 7, ll. 15-16 and 41-42). The broadcast includes default  
26 advertisements in these slots. (Hite, col. 7, ll. 20-22). Hite suggests that the

1 unique CID codes in the broadcast be indistinguishable by ordinary means  
2 so that the codes cannot be used by illegitimate electronic devices to “zap”  
3 advertisements. (Hite, col. 13, ll. 47-57). This warning would have implied  
4 to one of ordinary skill in the art that the unique CID codes are indicative of  
5 such advertising slots and that one might use the codes to find such slots.

6           11. A “commercial processor” in Hite’s system “would look for the  
7 CID in each incoming commercial at a break during a broadcast program.”  
8 (Hite, col. 7, ll. 24-26). If the commercial processor detects a CID code at  
9 the break and if there is a stored advertisement having codes indicating that  
10 the advertisement may be played in the advertising slot, the stored  
11 advertisement is accessed from the recording device and played in the slot  
12 instead of the default advertisement. (Hite, col. 7, ll. 26-30).

PRINCIPLES OF LAW

15        “To anticipate a claim, a prior art reference must disclose every  
16 limitation of the claimed invention, either explicitly or inherently.” *In re*  
17 *Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). In determining whether  
18 limitations recited in the claim are disclosed by the reference, the language  
19 of the claim is to be given its “broadest reasonable interpretation consistent  
20 with the specification,” construing the claim language and specification as  
21 they would be understood by one of ordinary skill in the art. *In re American*  
22 *Acad. of Science Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (quoting  
23 *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)).

24 A claim is unpatentable for obviousness under 35 U.S.C. § 103(a) if  
25 “the differences between the subject matter sought to be patented and the  
26 prior art are such that the subject matter as a whole would have been obvious

1 at the time the invention was made to a person having ordinary skill in the  
2 art to which said subject matter pertains.” In *Graham v. John Deere Co.*,  
3 383 U.S. 1 (1966), the Supreme Court set out factors to be considered in  
4 determining whether claimed subject matter would have been obvious:

5  
6 Under § 103, the scope and content of the prior art  
7 are to be determined; differences between the prior  
8 art and the claims at issue are to be ascertained;  
9 and the level of ordinary skill in the pertinent art  
10 resolved. Against this background, the  
11 obviousness or nonobviousness of the subject  
12 matter is determined.  
13

14 *Id.*, 383 U.S. at 17.

## 16 ANALYSIS

### 17 A. *The Rejection of Claims 1-13, 16-19 and 21-25 Under Section* 18 *102(b) As Being Anticipated by Dimitriadis*

19 Independent claim 1 recites a method including the steps of  
20 “monitoring the received radio broadcast stream for marker data indicative  
21 of an advertising slot within the radio broadcast stream” and, “in response to  
22 detecting the marker data, . . . playing the radio advertisement in the  
23 advertising slot using the vehicle radio.” We agree with the Appellants  
24 (App. Br. 10) that “[t]he use of marker data in the radio broadcast stream to  
25 identify the location of an advertising slot is not taught or suggested by  
26 Dimitriadis.”

27 The Examiner has identified only two items disclosed expressly or  
28 inherently in Dimitriadis which might constitute “marker data.” The  
29 Examiner finds that the “PRESENT” command constitutes “marker data”

1       within the meaning of claim 1. (Ans. 3). The Examiner also finds that the  
2       detection of a condition included in an advertisement's condition list  
3       constitutes "marker data." (Ans. 3). The Examiner has not identified any  
4       disclosure in Dimitriadis which might suggest a relationship between the  
5       timing of advertising slots, on the one hand, and either the transmission of a  
6       "PRESENT" command, the occurrence of a condition of an advertisement's  
7       condition list or the timing of the control loop by which the microprocessor  
8       searches for conditions, on the other, sufficient to show that any of these  
9       events are indicative of an advertising slot.

10       Although Dimitriadis discloses that the detection of a "PRESENT"  
11       command causes an advertisement to be queued for presentation (FF 4) and  
12       that the detection of a condition on the condition list of an advertisement  
13       likewise causes the advertisement to be queued (FF 3), the Examiner has not  
14       identified any disclosure in Dimitriadis sufficient to show that an  
15       advertisement is played when queued (FF 5). Even were a "PRESENT"  
16       command identifying an advertisement or a condition on an advertisement's  
17       condition list indicative of a particular advertising slot, we would agree with  
18       the Appellants (App. Br. 11 and 12) that the reference fails to disclose the  
19       step of playing the advertisement in the indicated slot in response to the  
20       detection of such a command or condition.

21       On the record before us, the Appellants have shown that the Examiner  
22       erred in rejecting independent claim 1 under section 102(b). Likewise, the  
23       Appellants have shown that the Examiner erred in rejecting dependent  
24       claims 2-13, 16-19 and 21-25 under section 102(b).

1           *B. The Rejection of Claims 26-41 Under Section 102(b) As Being*  
2           *Being Anticipated by Dimitriadis*

3           Independent claim 26 recites a radio system for a vehicle including a  
4       “vehicle radio having an input for receiving audio data . . .” and a radio  
5       broadcast receiver “coupled to the input of the vehicle radio to provide the  
6       vehicle radio with the received audio content . . .” On receipt of a marker  
7       identifying an advertising slot, an advertising control unit of the radio  
8       system “is operable to access one of the stored radio advertisements, with  
9       the accessed radio advertisement being inserted into the advertising slot  
10      identified by the received marker *so that the accessed radio advertisement is*  
11      *included within the audio content sent to the input of the vehicle radio.*”

12     [Emphasis added.] We agree with the Appellants (Reply Br. 4-5) that  
13     Dimitriadis’ Fig. 2 appears to be consistent with a system which sends the  
14     stored advertising content to the amplifier independently of the voice signal.  
15     The Examiner has not identified a disclosure in Dimitriadis sufficient to  
16     show that the advertising presentation block communicates with the  
17     amplifier through the input coupled to the voice radio receiver (FF 6).

18     On record before us, the Appellants have shown that the Examiner  
19     erred in rejecting independent claim 26 under section 102(b). Likewise, the  
20     Appellants have not shown that the Examiner erred in rejecting dependent  
21     claims 27-41 under section 102(b).

22

23           *C. The Rejection of Claims 14, 15 and 20 Under Section 103(a) As*  
24           *Being Unpatentable Over Dimitriadis in View of Hite*

25     Claim 14 ultimately depends from claims 1 and 4. The Appellants  
26     present no arguments suggesting that claim 14 might be patentable if claims  
27     1 and 4 were determined to be unpatentable. (*See* App. Br. 10 and 19).

1 Claims 15 and 20 ultimately depend from claim 1. The Appellants present  
2 no arguments suggesting that claims 15 and 20 might be patentable if claim  
3 1 were determined to be unpatentable. (*See id.*).

4 With respect to the Appellants' arguments regarding parent claim 1  
5 (App. Br. 10 and 19), Hite would have suggested to one of ordinary skill in  
6 the art monitoring a received broadcast stream for marker data indicative of  
7 an advertising slot within the broadcast stream. The reference also would  
8 have suggested to one of ordinary skill in the art playing the radio  
9 advertisement in the advertising slot using the vehicle radio in response to  
10 detecting the marker data. (FF 11).

11 Hite does not teach expressly that the commercial processor monitors  
12 the broadcast for CID codes indicative of advertising slots. Nevertheless,  
13 one typically cannot patent "the mere application of a known technique to a  
14 piece of prior art ready for improvement." *KSR Int'l Co. v. Teleflex, Inc.*,  
15 127 S.Ct. 1727, 1740 (2007). Hite, like Dimitriadis, teaches systems and  
16 processes capable of delivering radio advertising content targeted to  
17 individuals' desires and needs. (*Compare FF 7 with 8*). Both Dimitriadis  
18 and Hite also teach storing targeted advertising content at the site where the  
19 content is to be delivered and inserting the targeted advertising into a  
20 broadcast. (*Compare FF 1 with FF 9*).

21 Hite teaches inserting marker data, that is, a unique CID code, into the  
22 broadcast in each advertising slot having a default advertisement subject to  
23 replacement. (FF 10). The reference suggests that these unique CID codes  
24 can be used to find advertising slots. (*Id.*). The reference teaches that a  
25 commercial processor looks for the CID code in each incoming  
26 advertisement at a break during a broadcast program. (FF 11). These

1 teachings and suggestions would have provided one of ordinary skill in the  
2 art reason to modify Dimitriadis' voice broadcast to include unique CID  
3 codes inserted in advertising slots; to modify the programming of  
4 Dimitriadis' microprocessor to look for such CID codes in the voice  
5 broadcast; and to additionally modify the programming of Dimitriadis'  
6 microprocessor to access an advertisement from memory and play the  
7 advertisement in the advertising slot identified by the unique CID code in  
8 response to detection of that CID code in the voice broadcast.

9 Such modifications would have been within the level of ordinary skill  
10 in the art as evidence by the disclosures of Dimitriadis and Hite. *See*  
11 *Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (Prior art  
12 references relied on by the Examiner may serve as evidence of the level of  
13 ordinary skill in the art). One of ordinary skill in the art could have  
14 predicted that modifying the programming of Dimitriadis' microprocessor to  
15 monitor a received voice broadcast for CID codes indicative of advertising  
16 slots would permit the microprocessor to find such advertising slots to insert  
17 advertisements previously selected for storage in local memory based on  
18 predetermined CID codes targeting particular recipients.

19 Parent claim 4 recites that each of a plurality of radio advertisements  
20 "is accompanied by advertising data associated with the received radio  
21 advertisement" and that a step of "selecting certain ones of the received  
22 radio advertisements" includes "selecting certain ones of the different radio  
23 advertisements using the advertisement data associated with the different  
24 radio advertisements." The Appellants contend that "Dimitriadis nowhere  
25 discloses this claimed use of advertisement data in determining which  
26 received advertisement to store" (App. Br. 14) and that the Examiner has not

1 pointed to any teachings in Hite by which this feature would have been  
2 obvious (App. Br. 19). Hite teaches selecting advertisements to be stored at  
3 the site by comparing CID codes transmitted with the advertisement against  
4 predetermined CID codes stored at the site where the advertising content is  
5 to be delivered. (FF 9).

6 On the record before us, the Appellants have not shown that the  
7 Examiner erred in rejecting claims 14, 15 and 20.

8

9       *D. The Rejection of Claim 42 Under Section 103(a) As  
10           Being Unpatentable Over Dimitriadis in View of Hite*

11       Claim 42 ultimately depends from claim 26. Parent claim 26 recites a  
12 radio system for a vehicle including a “vehicle radio having an input for  
13 receiving audio data . . .” and a radio broadcast receiver “coupled to the  
14 input of the vehicle radio to provide the vehicle radio with the received  
15 audio content . . . .” On receipt of a marker identifying an advertising slot,  
16 an advertising control unit of the radio system “is operable to access one of  
17 the stored radio advertisements, with the accessed radio advertisement being  
18 inserted into the advertising slot identified by the received marker *so that the*  
19 *accessed radio advertisement is included within the audio content sent to the*  
20 *input of the vehicle radio.*” [Emphasis added.] We conclude that  
21 Dimitriadis does not teach or suggest these limitations for essentially the  
22 reasons given in connection with the patentability of claim 26 under section  
23 102(b). We have not been directed to any teaching in Hite which would  
24 have provided one of ordinary skill in the art reason to modify Dimitriadis’  
25 system to meet these limitations. Hite does not address expressly a vehicle  
26 radio system.

1       On the record before us, the Appellants have shown that the Examiner  
2 erred in rejecting claim 42.

3

4           *E. The Rejection of Claims 43-45 Under Section 103(a) As*  
5           *Being Unpatentable Over Dimitriadis in View of Hite*

6       Independent claim 43 recites a radio broadcast system including “one  
7 or more radio broadcast transmitting facilities that provide . . . a second  
8 radio broadcast stream which includes audio content that contains  
9 intermittent advertising slots each identified by a marker contained with that  
10 broadcast stream . . . .” The Appellants contend that this limitation is not  
11 suggested by Dimitriadis and Hite. (App. Br. 19). We disagree for reasons  
12 given earlier in connection with the patentability of claims 14, 15 and 20.

13       Independent claim 43 further recites:

14  
15           storing selected ones of said advertisements on  
16           said recording device based on a comparison of  
17           primary selection data stored in said vehicle radio  
18           system with the primary selection data that is  
19           included with said advertisements, . . . wherein  
20           said primary selection data includes one or more  
21           data items associated with . . . a user of the  
22           vehicle . . . .  
23

24       We disagree with the Appellants’ contention (App. Br. 19-20) that this  
25       limitation is not suggested by Dimitriadis and Hite. Dimitriadis teaches  
26       targeting advertisements to groups of listeners by using group addressing  
27       and loading into storage only advertisements tailored to group needs. (FF  
28       7). Hite teaches selecting advertisements to be stored at the site by  
29       comparing the CID codes associated with each received advertisement with

1 predetermined CID codes stored at the site where the advertising content is  
2 to be delivered. (FF 7-8).

Independent claim 43 also recites “selecting one of said stored advertisements based on said secondary selection data for playback via the vehicle radio . . . .” We disagree with the Appellants contention (App. Br. 19-20) that this limitation is not suggested by Dimitriadis and Hite. The present Specification identifies several examples of such secondary selection data including time of day criteria. (Spec. 12, ll. 31-32). Hite teaches including among the codes attached to an advertisement a condition or rule regarding the day-part required to play the advertisement. (FF 9).

11 On the record before us, the Appellants have not shown that the  
12 Examiner erred in rejecting independent claim 43 under section 103(a).  
13 Likewise, the Appellants have not shown that the Examiner erred in  
14 rejecting dependent claims 44 and 45 under section 103(a). *In re Dillon*, 919  
15 F.2d 688, 692 (Fed. Cir. 1990) (*en banc*).

## CONCLUSIONS OF LAW

18 On the record before us, the Appellants have shown that the Examiner  
19 erred in rejecting claims 1-13, 16-19, and 21-41 under section 102(b) as  
20 being anticipated by Dimitriadis and in rejecting claim 42 under section  
21 103(a) as being unpatentable over Dimitriadis in view of Hite. The  
22 Appellants have not shown that the Examiner erred in rejecting claims 14,  
23 15, 20 and 43-45 under section 103(a). Since the rationale by which we  
24 affirm the rejection of claims 14, 15, 20 and 43-45 differs from that  
25 articulated by the Examiner, we designate the grounds of the affirmance as  
26 new grounds of rejection under 37 C.F.R. § 41.50(b) (2007).

## NEW GROUNDS OF REJECTION

Pursuant to 37 C.F.R. § 41.50(b), we enter the following additional new grounds of rejection:

***Claim Rejection – 35 U.S.C. § 103(a)***

6           1. The following is a quotation of 35 U.S.C. § 103(a) that forms  
7 the basis for the new ground of rejection:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-13, 16-19 and 21-25 are rejected under 35 U.S.C.

22 § 103(a) as being unpatentable over Dimitriadis (U.S. Patent 5,664,948) in  
23 view of Hite (U.S. Patent 5,774,170).

24       3. With respect to claims 1, 3, 16 and 21-25, Dimitriadis teaches a  
25 method of delivering advertising content to a vehicle occupant using a  
26 vehicle radio including the steps of receiving a radio advertisement (FF 1);  
27 storing the radio advertisement in memory (FF 2); receiving a radio  
28 broadcast stream (FF 1); playing the radio broadcast stream using the vehicle  
29 radio (*id.*); accessing the radio advertisement from memory (FF 5); and

1 playing the radio advertisement in the advertising slot using the vehicle radio  
2 (FF 7).

3       4. As discussed earlier in connection with the patentability of  
4 claims 14, 15 and 20, the teachings of Dimitriadis and Hite would have  
5 provided one of ordinary skill in the art at the time of the invention reason to  
6 modify Dimitriadis' method to include the steps of monitoring the received  
7 radio broadcast stream for marker data indicative of an advertising slot  
8 within the radio broadcast stream and, in response to detecting the marker  
9 data, accessing the radio advertisement from memory and playing the radio  
10 advertisement in the advertising slot using the vehicle radio.

11       5. With respect to claim 2, Hite teaches receiving a radio  
12 broadcast with in-line, that is, default, advertisements identified by marker  
13 data, that is, unique CID codes. (FF 10). Hite further teaches substituting a  
14 stored radio advertisement for the in-line advertisement. (FF 11).

15       6. With respect to claims 4-7 and 13, Hite teaches selecting  
16 advertisements to be stored at the site by comparing CID codes transmitted  
17 with the advertisement against predetermined CID codes stored at the site  
18 where the advertising content is to be delivered. (FF 9).

19       7. With respect to claims 8-12, 18 and 19, Hite teaches selecting  
20 certain ones of different radio advertisements using primary selection data  
21 and storing the selected radio advertisements in the memory. Hite further  
22 teaches selecting one of the stored radio advertisements using secondary  
23 selection data, accessing that stored radio advertisement in response to  
24 detecting the marker data and then playing the accessed radio advertisement  
25 using the vehicle radio. These teachings were detailed earlier in connection  
26 with the patentability of claims 43-45.

## DECISION

2 We reverse the rejections of claims 1-13, 16-19 and 21-42. We affirm  
3 the rejection of claims 14, 15, 20 and 43-45 and designate the grounds of the  
4 affirmation as new ground of rejections. We enter new grounds of rejection  
5 against claims 1-13, 16-19 and 21-25.

6 This decision contains a new ground of rejection pursuant to 37  
7 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) also provides that Appellants,  
8 WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must  
9 exercise one of the following two options with respect to the new ground of  
10 rejection to avoid termination of the appeal as to the rejected claims:

11                   (1) *Reopen prosecution.* Submit an appropriate  
12 amendment of the claims so rejected or new  
13 evidence relating to the claims so rejected, or both,  
14 and have the matter reconsidered by the examiner,  
15 in which event the proceeding will be remanded to  
16 the examiner. . . .

21           No time period for taking any subsequent action in connection with  
22 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.  
23 § 1.136(a)(1)(iv) (2007).

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AFFIRMED-IN-PART; 37 C.F.R. § 41.50(b)

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Appeal 2008-0410  
Application 09/870,377

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